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Navy Case No. 82,918

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of :  
William M. Appleman, et al. : Group Art Unit: 1723  
Serial No. 09/879,870 : Examiner: Krishnan S. Menon  
Filed: June 13, 2001 : CONFIRMATION NO. 4961  
For: ARRANGEMENT AND CONSTRUCTION :  
OF AN ELEMENT BUNDLING MODULE :

APPEAL BRIEF

Commissioner of Patents  
Washington, D.C. 20231

Sir:

This brief relates to an appeal seeking review by the Board of Patent Appeals and Interferences of the Examiner's decision finally rejecting claims 2 and 3 as set forth in the Final Office action dated Dec. 2, 2002.

(1) REAL PARTY IN INTEREST

The party of interest in the above entitled application is the United States of America as represented by the Secretary of the Navy as assignee of the entire interest in the subject invention of the above named inventor.

(2) RELATED APPEALS AND INTERFERENCES

None

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### (3) STATUS OF CLAIMS

Claims 1-8 were pending in the application prior to the Final Office action, in which claims 1-7 were finally rejected and claim 8 was withdrawn as directed to a non-elected method invention.

### (4) STATUS OF AMENDMENTS

Two amendments proposed under 35 U.S.C. 116 were submitted after receipt of the Final Office action and preceding the noting of this appeal. Such amendments were not entered. The amendment now submitted with this brief, following the noting of this appeal, merely proposes cancellation of finally rejected claims 1 and 4-7 and recasting of dependent claim 2 in independent form without change so as to reduce consideration to claims 2 and 3.

### (5) SUMMARY OF THE INVENTION

A concise explanation of the subject invention covered by claims 2 and 3 on appeal, is as follows:

A module housing (12) is internally provided with seal rings (22) to enclose a sealed chamber (25) within which elongated processing elements (20) are held bundled in spaced relation to each other by anchor holding discs (24) at opposite axial ends of the elements (20). Contaminate-laden fluid flows into the housing (12) at an axial inlet end (14), to be filtered during axial flow to the other axial outlet end (16), by lateral flow through the processing elements (20) which are maintained in spaced relation to each other by spacers (28) so as to accommodate lateral withdrawal of a cleansed portion of the fluid for discharge from the housing (12) through an outlet drain (18) at a location midway between the axial inlet and outlet ends (14) and (16) of the housing (12).

#### (6) ISSUES

Presented for review in this appeal are two final rejections under 35 U.S.C. 102, respectively based on conjectured anticipation of the subject invention to which claims 2 and 3 are limited. The disclosures in U.S. Patent No. 6,284,451 to Funatsu et al and in U.S. Patent No. 5,916,440 to Garcera et al. are relied on as the only basis set forth for conjection as to anticipation.

#### (7) GROUPING OF CLAIMS

Claims 2 and 3 form one group of claims related to an arrangement and construction of a fluid processing module.

#### (8) ARGUMENT

Claims 2 and 3 under consideration stand finally rejected as anticipated by the disclosure in the Funatsu et al. patent under 35 U.S.C. 102(e) and the disclosure in the Garcera et al. patent under 35 U.S.C. 102(b).

In regard to the final rejection of claims 2 and 3 over the Funatsu et al. patent, the Final Office action on page 4, paragraph 1 conjectures that such prior art reference discloses a: "drain for discharge of clean fluid (6 fig. 1)". Presumably, the Examiner is contending that such latter quoted conjecture is set forth in the recitation in claim 2 of: "drain means--for discharging--cleansed portion of the contaminate-laden fluid from the sealed chamber in response to filtration". According to column 5, lines 59-67 in the Funatsu et al. patent, part (6) is a housing inlet for cells 10 as shown in FIG. 1, rather than a discharge drain as referred to by the Examiner. Thus column 5, lines 59-67 in the Funatsu et al. patent states: "cells 10--fed from--cell inlet 6 formed in the housing 1--in the space 5". Therefore, the latter quoted portion of the disclosure in the Funatsu et al. patent clearly contradicts the Examiner's conjecture that the part 6 as disclosed in the Funatsu

et al. patent is a discharge drain outlet for cleansed fluid, in order to support the final rejection under 35 U.S.C. 102. Such final rejection is therefore in error on one account.

Claim 2 is furthermore limited by another recitation to: "--sealed chamber through which the filtered fluid is laterally withdrawn--". No lateral withdrawal of filtered fluid is referred to or disclosed in the Funatsu et al. patent, as called for in the latter quoted recitation of claim 2 under consideration. Therefore, the final rejection over the Funatsu et al. patent is in error on another account.

According to the other final rejection of claims 2 and 3 under 35 U.S.C. 102 over the Garcera et al. patent, as set forth on page 4, paragraph 2 of the Final Office action, the disclosure in the Garcera et al. patent is conjectured as featuring: "elongated process elements (1-fig. 1), sealed chamber (inside 1-fig. 1, seal 25), fluid--conducted through the elements (arrow 3-fig. 1)--drain means (4-fig. 1) for removing cleansed fluid--". However as previously pointed out of record by applicants and never contested by the Examiner, the elongated process elements 1 as disclosed in the Garcera et al. patent do not filter fluid that is laterally withdrawn and discharged by drainage from the housing as called for by recitation in claim 2. Accordingly, the final rejection over the Garcera et al. patent under 35 U.S.C. 102(b) as set forth in the Final Office action is also clearly in error.

In view of the evidentiary support and associated reasons as hereinbefore pointed out, involving quotations of recitations in claims 2 and 3 under appeal and references to actual

portions of the disclosures in the Funatsu et al. and Garcera et al. patents, the final rejections as stated in the Final Office action are clearly in error and should therefore be reversed.

The Commissioner is hereby authorized to charge the Appeal Brief fee of \$320.00 to Deposit Account No. 50-0958 or credit any overpayment.

Respectfully submitted,



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(9) APPENDIX

Recast claim 2 in independent form:

2. In combination with a housing of a module enclosing a plurality of elongated processing elements through which a contaminate-laden fluid is filtered; the improvement residing in: sealing means for establishing a sealed chamber within the module housing through which the contaminate-laden fluid is conducted externally of the processing elements; holding means for positioning the elongated processing elements within the sealed chamber in a bundled condition; spacer means for maintaining the bundled processing elements in laterally spaced relation to each other throughout within the sealed chamber through which the filtered fluid is laterally withdrawn as a cleansed portion of the contaminate-laden fluid; and drain means on the housing for discharging said cleansed portion of the contaminate laden fluid from the sealed chamber in response to filtration by the elongated processing elements.

3. The combination as defined in claim 2, wherein said sealing means includes: a pair of axially spaced seal rings in radially outer sealing contact with the module housing; and said holding means is retained within said seal rings for anchoring therein opposite end portions of the processing elements in the bundled condition.